

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Second
Amended Accusation Against:**

MOSHE MILLER LEWIS, M.D.

Case No. 800-2014-007325

**Physician's and Surgeon's
Certificate No. A90204**

Respondent

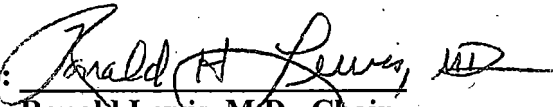
DECISION

The attached Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 18, 2018.

IT IS SO ORDERED April 19, 2018.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald Lewis, M.D., Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 JOSHUA M. TEMPLET
Deputy Attorney General
4 State Bar No. 267098
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3533
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Second Amended
11 Accusation Against:

12 **MOSHE MILLER LEWIS, M.D.**

13 **1580 Valencia Street #703**
14 **San Francisco, CA 94110**

15 **Physician's and Surgeon's Certificate No.**
A90204

16 Respondent.

Case No. 800-2014-007325

OAH No. 2017070937

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPRIMAND

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19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, via Joshua M.
25 Templet, Deputy Attorney General.

26 2. Respondent Moshe Miller Lewis, M.D. (Respondent) is represented in this
27 proceeding by attorney David A. Depolo, 201 North Civic Drive, Ste. 239, Walnut Creek, CA
28 94596.

3. On February 18, 2005, the Board issued Physician's and Surgeon's Certificate No. A90204 to the Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 800-2014-007325, and will expire on June 30, 2018, unless renewed.

JURISDICTION

4. Accusation No. 800-2014-007325 was filed before the Board, and is currently pending against the Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 5, 2017. Respondent timely filed his Notice of Defense contesting the Accusation. On November 1, 2017, First Amended Accusation No. 800-2014-007325 was filed before the Board and was properly served on the Respondent with all other statutorily required documents. On February 28, 2018, Second Amended Accusation No. 800-2014-007325 (Second Amended Accusation) was filed before the Board and was properly served on the Respondent with all other statutorily required documents.

5. A copy of the Second Amended Accusation is attached as **Exhibit A** and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. The Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in the Second Amended Accusation. The Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reprimand.

7. The Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Second Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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8. The Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. The Respondent understands and agrees that the charges and allegations in the Second Amended Accusation, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Second Amended Accusation without the expense and uncertainty of further proceedings, the Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Second Amended Accusation, and that the Respondent hereby gives up his right to contest those charges.

11. The Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. The Respondent understands and agrees that counsel for the Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by the Respondent or his counsel. By signing the stipulation, the Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Reprimand shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reprimand, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that the Respondent, Moshe Miller Lewis, M.D., Physician's and Surgeon's Certificate No. A90204, shall be and hereby is publicly reprimanded pursuant to California Business and Professions Code, section 2227, subdivision (a)(4). This public reprimand is issued in connection with allegations of negligent prescribing and inadequate recordkeeping regarding the Respondent's treatment of three patients between 2013 and 2017, as set forth in Second Amended Accusation No. 800-2014-007325.

1. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the effective date of this Decision, the Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. The Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. The Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. The Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Second Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

The Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, the Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. The Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. The Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after the Respondent's initial enrollment. The Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at the Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Second Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

The Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reprimand and have fully discussed it with my attorney, David A. Depolo. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order for Public Reprimand voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

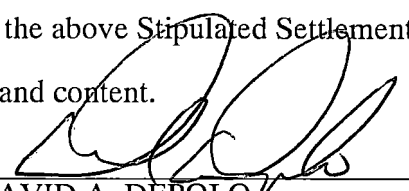
3/20/18


MOSHE MILLER LEWIS, M.D.
Respondent

1 I have read and fully discussed with Respondent Moshe Miller Lewis, M.D. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order
3 for Public Reprimand. I approve its form and content.

4 DATED:

3/20/18


DAVID A. DEPOLO
Attorney for Respondent

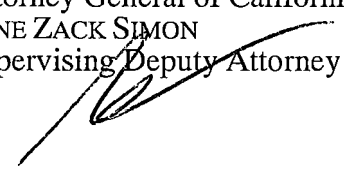
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7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby
9 respectfully submitted for consideration by the Medical Board of California.

10 Dated:

3/20/2018

Respectfully submitted,

11
12 XAVIER BECERRA
Attorney General of California
13 JANE ZACK SIMON
Supervising Deputy Attorney General
14 

15 JOSHUA M. TEMPLET
16 Deputy Attorney General
Attorneys for Complainant
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Stipulation.rtf
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Exhibit A

Second Amended Accusation No. 800-2014-007325

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 JOSHUA M. TEMPLET
Deputy Attorney General
4 State Bar No. 267098
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5529
6 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 28 2018
BY *[Signature]* ANALYST

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Second Amended
11 Accusation Against:

Case No. 800-2014-007325

SECOND AMENDED ACCUSATION

12 **MOSHE MILLER LEWIS, M.D.**
13 **1213 Eaton Ave., Ste. 6**
San Carlos, CA 94070-5233

14 **Physician's and Surgeon's Certificate**
15 **No. A90204,**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation solely
21 in her official capacity as the Executive Director of the Medical Board of California, Department
22 of Consumer Affairs (Board).

23 2. On February 18, 2005, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A90204 to Moshe Miller Lewis, M.D. (Respondent). The certificate was in
25 full force and effect at all times relevant to the charges brought herein and will expire on
26 June 30, 2018, unless renewed.

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JURISDICTION

3. This Second Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code states, in relevant part:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out of disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practices carried out by physician and surgeon certificate holders under the jurisdiction of the board."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code states, in relevant part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

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“(b) Gross negligence.

“(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

“(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

“(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.”

7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FACTS

8. At all times relevant to this matter, Respondent was licensed and practicing medicine in California.

PATIENT P-1¹

9. Patient P-1 was 41 years old when she first presented at Respondent's office on May 17, 2013. She was seen by Respondent's physician assistant (PA). P-1 complained of pain in her low back, right hand, and both knees. She was being treated for chronic pain with Norco²,

¹ The patients are designated in this document as Patient P-1 through P-3 to protect their privacy. Respondent knows the names of the patients and can confirm their identities through discovery.

² Norco, a trade name for hydrocodone bitartrate with acetaminophen, is an opioid analgesic. It is currently a Schedule II controlled substance—it was rescheduled from a Schedule III to a Schedule II controlled substance on August 22, 2014—and is a dangerous drug as defined in section 4022. Hydrocodone can produce drug dependence and, therefore, has the potential for being abused. It has a CNS depressant effect. Norco has 10 mg of hydrocodone and 325 mg of acetaminophen. At high levels, acetaminophen can cause liver toxicity and even death. The maximum 24-hour dosage of acetaminophen should not exceed 4000 mg.

1 fentanyl³ patch, Flector Patch⁴, and lidocaine⁵ ointment and, for attention deficit hyperactivity
2 disorder (ADHD), Adderall⁶.

3 10. The physician assistant took a thorough history and performed a thorough physical
4 examination during P-1's initial encounter on May 17, 2013 and diagnosed P-1 with scoliosis,
5 right carpal tunnel syndrome, and left chondromalacia patella. She noted P-1's prior non-
6 medication treatments as physical therapy, SI joint injections, knee bracing, acupuncture,
7 chiropractic, massage therapy, and TENS. A baseline urine drug screen was performed at the
8 visit—which was positive for opiates, benzodiazepines, amphetamines, and oxycodone—and P-1
9 signed a pain medication agreement.

10 11. P-1's next visit to Respondent's office was June 6, 2013. This time she was seen by
11 Respondent himself who also documented a thorough history and physical. The language
12 describing the physical examination is identical to the language contained in the PA's May 17th
13 chart notes. He obtained signed releases from P-1 for her medical records from her prior
14 physician and her psychiatrist and documented that he had reviewed a Controlled Substance
15 Utilization Review and Evaluation System (CURES) report for P-1 for the previous one-year
16 period. The CURES report reflected that P-1 had received multiple classes of controlled
17 substances (opioids, benzodiazepines, and stimulants) from three different pharmacies over the
18 course of that year. Despite the absence in the CURES Report of any prescriptions for
19 oxycodone, Respondent noted that the results of P-1's urine drug screen, which was positive for
20

21 ³ Fentanyl is an opioid analgesic and a Schedule II controlled substance and dangerous
22 drug as defined in section 4022. Fentanyl's primary effects are anesthesia and sedation. When
23 patients are using a fentanyl patch, the dosage of central nervous system depressant drugs should
24 be reduced at least 50%. Fentanyl can produce drug dependence similar to that produced by
25 morphine and has the potential for abuse. It is physically and psychologically addictive.

26 ⁴ Flector Patch is a patch containing diclofenac epolamine, a nonsteroidal anti-
27 inflammatory drug. Diclofenac epolamine is a dangerous drug as defined in section 4022.
28 Flector Patch is indicated for the topical treatment of acute pain due to minor strains, sprains, and
contusions.

⁵ Lidocaine ointment is a local anesthetic. It prevents pain by blocking the signals at the
nerve endings in the skin. Lidocaine is a dangerous drug as defined in section 4022.

⁶ Adderall contains a combination of amphetamine and dextroamphetamine, central
nervous system stimulants that affect chemicals in the brain and nerves that contribute to
hyperactivity and impulse control. It is a Schedule II controlled substance and a dangerous drug
as defined in section 4022. Adderall is used to treat narcolepsy and attention deficit hyperactivity
disorder (ADHD).

1 oxycodone, were "consistent with CURES report and prescriptions from other providers."

2 Without discussion of P-1's addiction risk, including possible referral to an addiction specialist,
3 Respondent prescribed Fentanyl patches, 25 mcg, a new patch to be applied every 72 hours;
4 oxycodone, 15 mg, one tablet twice a day; and Norco 10/325, 2 tablets twice a day.

5 12. Respondent noted on June 20, 2013, that P-1 was in the process of relocating to
6 Hawaii. He had six more encounters with her through February 4, 2014, four in person (June 27,
7 2013, August 19, 2013, October 25, 2013, and December 12, 2013) and two by telephone (July
8 18, 2013 and February 4, 2014). In the chart notes for each of the four in-person visits and the
9 February 4, 2014 telephonic visit, a physical examination is documented in the exact same
10 language as that used in the notes for her first two visits.

11 13. Respondent did not document clear functional goals or progress toward goals in any
12 of his chart notes for P-1. During the period Respondent was treating P-1, she filled a
13 prescription for hydrocodone from her previous provider and refilled it three times in violation of
14 her pain medication agreement; she admitted to Respondent on July 18, 2013 that she was
15 "running through too much Norco"; and she used different pharmacies to fill prescriptions for
16 multiple controlled substances. Despite these aberrant behaviors, Respondent did not perform
17 another urine drug screen or check P-1's CURES reports after his initial review on May 20, 2013.

18 14. Respondent made little attempt to establish a multidisciplinary treatment plan for
19 P-1's chronic pain, instead concentrating on medication management.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Gross Negligence, Repeated Negligent Acts, Failure to Maintain Adequate Records)**

22 15. Respondent is guilty of unprofessional conduct and subject to disciplinary action
23 under section 2234, subdivisions (b) (gross negligence) and/or (c) (repeated negligent acts), and
24 section 2266 (inadequate records) of the Code in that Respondent was grossly negligent and/or, in
25 conjunction with the conduct described in the Second and Third Causes for Discipline,
26 committed repeated negligent acts and failed to maintain adequate records in the practice of
27 medicine by engaging in the conduct described above including, but not limited to, the following:

28 A. Respondent failed to sufficiently assess Patient P-1's addiction risk.

1 B. Respondent failed to document clear functional goals or utilize appropriate tools to
2 monitor Patient P-1's controlled substance use.

3 C. Respondent's documentation of P-1's physical examination was repeated, verbatim,
4 in the chart notes for each of his in-person visits with P-1, and even in one of his telephonic visits,
5 raising serious concerns about the accuracy of his records.

6 D. Respondent failed to establish a multidisciplinary treatment plan for P-1's chronic
7 pain.

8 **PATIENT P-3**

9 16. Respondent treated Patient P-3 for pain associated with chronic Crohn's Disease and
10 its attendant complications from approximately November 27, 2013 to March 23, 2017. During
11 this period, the primary medications he prescribed for P-3 were methadone and oxycodone.

12 17. From as early as Respondent's first visit with P-3, he documented "Depression or
13 anxiety problems: Yes" in P-3's chart notes. Respondent did not document any attempt to
14 address P-3's psychological functioning until March 17, 2016.

15 18. The chart notes for Respondent's first visit with P-3 include both methadone and
16 oxycodone among the medications listed in the Current Medication list. The notes for the second
17 visit do not include methadone in the Current Medication list although they do reflect that
18 Respondent was still prescribing it for P-3. In the subsequent chart notes for P-3 prepared by
19 both Respondent and another physician in the practice, the Current Medication lists sometimes
20 list methadone and sometimes do not, although the records do always reflect that methadone is
21 being prescribed.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Repeated Negligent Acts, Failure to Maintain Adequate Records)**

24 19. Respondent is guilty of unprofessional conduct and subject to disciplinary action
25 under section 2234, subdivision (c) (repeated negligent acts), and section 2266 (inadequate
26 records) of the Code in that, in conjunction with the conduct described in the First and Third
27 Causes for Discipline, Respondent committed repeated negligent acts and failed to maintain
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adequate records in the practice of medicine by engaging in the conduct described above including, but not limited to, the following:

A. Despite documenting that P-3 had depression or anxiety problems as early as November 27, 2013, Respondent did not document any attempt to address P-3's psychological functioning until March 17, 2016.

B. Respondent failed to maintain an accurate list of current medications in his chart notes for P-3.

PATIENT P-4

20. Respondent treated Patient P-4 for chronic neck pain from January 2013-November 2013. P-4 had previously participated in physical therapy and underwent a variety of interventional procedures through previous providers. The Respondent's treatment of P-4 involved predominately opioid therapy, and he did not document that he considered or discussed alternative treatment modalities with her, such as cognitive behavior therapy, non-opioid medications, or complementary therapies.

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts, Failure to Maintain Adequate Records)

21. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (c) (repeated negligent acts), and section 2266 (inadequate records) of the Code in that, in conjunction with the conduct described in the First and Second Causes for Discipline, Respondent committed repeated negligent acts and failed to maintain adequate records in the practice of medicine by engaging in the conduct described above.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A90204, issued to Moshe Miller Lewis, M.D.;
2. Revoking, suspending or denying approval of Moshe Miller Lewis, M.D.'s authority to supervise physician assistants and advanced practice nurses;

1 3. Ordering Moshe Miller Lewis, M.D., if placed on probation, to pay the Board the
2 costs of probation monitoring; and

3 4. Taking such other and further action as deemed necessary and proper.

4
5 DATED: February 28, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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